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09/839,529

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Andrew Hausman

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EXAMINER

OYEBISI, OJO O

ART UNIT

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3696

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DELIVERY MODE

12/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/839,529	Applicant(s) HAUSMAN, ANDREW	
	Examiner OJO O. OYEBISI	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmus et al. (Kalmus hereinafter, US PAT: 4,674,044) in view of Waelbroeck et al (Waelbroeck hereinafter, US Pub NO.: 2004/0059666).

Re claim 1. Kalmus discloses a method for electronic trading of interest with a reserve over at least one network including computers, comprising: receiving from a given user an order comprising terms for a total desired trade of interest (i.e., orders has to include appropriate data fields, such as identification of the office and customer, stock identification, price particulars and so forth, and then qualifies the order, see col.5, lines 1-10), said terms comprising an identification of said interest (i.e., stock/orders/shares/securities, see col.5, lines 1-10), an initial price (i.e., current bid and asked prices, see col.5, lines 1-10), an initial quantity (i.e., the amount of stock available for customer purchase or sale, see abstract) and a reserve quantity (i.e., orders not executable, i.e., orders not qualified, are either stored in memory for later execution if they become qualified, see col.5, lines 15-20). Kalmus does not explicitly disclose **said**

Art Unit: 3696

total desired trade being for a total desired quantity of the interest equal to a sum of said initial quantity and said reserve quantity; associating with said desired trade a reserve price change; disclosing based on the order received from the given user terms of a first proposed trade of said interest to others via the at least one network said terms for a first proposed trade comprising an identification of said interest, said initial price and said initial quantity; and upon acceptance of said first proposed trade for all or part of said initial quantity, disclosing terms of a second proposed trade of said interest to others via the at least one network, said terms for a second proposed trade comprising an identification of said interest, a second price, and a second quantity, said second price being equal to said initial price changed by said reserve price change, and said second quantity comprising at least a portion of said reserve quantity; and wherein disclosure to others of the reserve quantity of the order is withheld prior to the acceptance of said first proposed trade. However, Waelbroeck discloses **said total desired trade being for a total desired quantity of the interest equal to a sum of said initial quantity and said reserve quantity;** associating with said desired trade a reserve price change; disclosing based on the order received from the given user terms of a first proposed trade of said interest to others via the at least one network said terms for a first proposed trade comprising an identification of said interest, said initial price and said initial quantity; and upon acceptance of said first proposed trade, disclosing terms of a second proposed trade of said interest to others via the at least one network, said terms for a second proposed trade comprising an identification of said interest, a second price, and a second quantity, said second price being equal to said initial price

Art Unit: 3696

changed by said reserve price change, and said second quantity comprising at least a portion of said reserve quantity; and wherein disclosure to others of the reserve quantity of the order is withheld prior to the acceptance of said first proposed trade (i.e., Users that request a working order option are preferably required to enter an order quantity that is greater than the minimum block quantity. The additional size will be dispatched to be worked by an automated process that automatically places small slices on the regular market, in the manner known in the art as "random refresh" orders. Several such automated processes are available on the market today; some that are known in the art are random refresh algorithms that place a small quantity of shares at the best price on the market, and whenever said small quantity is exhausted, generates a new small order to be placed at the new best price. The refreshed quantity is chosen at random between a minimum and maximum size, for example between 500 and 900 shares. In another example the order is refreshed after a random delay of a few seconds. Other more sophisticated algorithms are commercially available to automate the execution of an order through its reduction to small pieces that are executed independently, such as ITG's Quantex. Other destinations, such as NyFIX Millennium, enable completely hidden orders to intercept order flow that was on its way to a third market destination, see paras 0424). Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Waelbroeck into Kalmus to manage market orders more efficiently and to reduce the market impact of large orders.

Re claim 8. Kalmus further discloses the method, wherein all terms of said second proposed trade are automatically disclosed (i.e., operative best bid and best asked

Art Unit: 3696

prices for each stock are communicated over link 22 from NASDAQ....., and orders for trades in the relevant securities are funneled to the processor in real time, see col.4, lines 52-60).

Re Claims 2-7. Kalmus discloses the method, wherein said interest comprises a commodities contracts, energy forward contracts, equity securities, fixed income securities, currency, a first currency and said initial price and said second price are expressed in a second currency (i.e., stock/orders/shares/securities see col.5, lines 1-10, also see abstract).

Re claim 8. Kalmus further discloses the method, wherein all terms of said second proposed trade are automatically disclosed (i.e., operative best bid and best asked prices for each stock are communicated over link 22 from NASDAQ , and orders for trades in the relevant securities are funneled to the processor in real time, see col.4 lines 52-60).

Re claim 9. Kalmus further discloses the method as stated supra, wherein all terms of said second proposed trade are disclosed only after some intervention by an appropriate system user (i.e., the processor signals the trader to readjust his quantity or other market-characterizing criteria, see col.5, lines 35-40).

Re claims 10 and 11. Kalmus further discloses the method as stated supra, wherein said proposed trades are proposed sales, and said reserve price change increases said initial price, and said proposed trades are proposed purchases, and said reserve price change decreases said initial price (i.e., Thus, for example, the customer may seek to sell stock above the current bid price or to purchase the security below the current

Art Unit: 3696

asked price. A customer may seek to trade a number of shares which exceeds the amount which the particular market maker is willing to accommodate, either in gross or for any one order. Orders not executable, i.e., orders not qualified, are either stored in memory in the processor 10 for later execution if they become qualified (such as by a favorable change in the market price for a security which can then accommodate the customer's price limits, col.5 lines 5-20. That is to say, the bid prices and the asked prices are readjusted when the orders become qualified depending on if the orders are sale orders or purchase orders, later execution of proposed sales would sell at higher prices than the initial price, and later execution of proposed purchases would purchase at lower prices than the initial prices).

Re claim 12. Kalmus further discloses the method, wherein said second quantity is equal to a preselected quantity, or if said reserve quantity is less than the preselected quantity, all of said reserve quantity (i.e., when the insider market price changes, the processor signals the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45), that is to say, when the price changes and the quantity is readjusted, it is obvious that there will be a new price (i.e., second price) and a new quantity (i.e., second quantity), and said second quantity would comprise at least a portion of said reserve quantity (i.e., every order (first, second, third etc) would be taken from non executable orders (reserve quantity) until all orders become executable – note

Art Unit: 3696

if preselected quantity > reserve quantity, then all orders have been executed, reserve=0).

Re claim 13. Kalmus does not explicitly disclose the method, further comprising: upon acceptance of said second proposed trade, disclosing terms of a third proposed trade of said interest to others via the at least one network, said terms for a third proposed trade comprising an identification of said interest, a third price, and a third quantity, said third price equal to said second price changed by said reserve price change, and said third quantity being not greater than said reserve quantity less said second quantity.

However, Waelbroeck discloses the method, further comprising: upon acceptance of said second proposed trade, disclosing terms of a third proposed trade of said interest to others via the at least one network, said terms for a third proposed trade comprising an identification of said interest, a third price, and a third quantity, said third price equal to said second price changed by said reserve price change, and said third quantity being not greater than said reserve quantity less said second quantity (i.e., Users that request a working order option are preferably required to enter an order quantity that is greater than the minimum block quantity. The additional size will be dispatched to be worked by an automated process that automatically places small slices on the regular market, in the manner known in the art as "random refresh" orders. Several such automated processes are available on the market today; some that are known in the art are random refresh algorithms that place a small quantity of shares at the best price on the market, and whenever said small quantity is exhausted, generates a new small order to be placed at the new best price. The refreshed quantity is chosen at random

Art Unit: 3696

between a minimum and maximum size, for example between 500 and 900 shares. In another example the order is refreshed after a random delay of a few seconds. Other more sophisticated algorithms are commercially available to automate the execution of an order through its reduction to small pieces that are executed independently, such as ITG's Quantex. Other destinations, such as NyFIX Millennium, enable completely hidden orders to intercept order flow that was on its way to a third market destination, see paras 0424). Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Waelbroeck into Kalmus to manage market orders more efficiently and to reduce the market impact of large orders.

Re claim 14. Kalmus further implicitly disclose the method, wherein said third remaining quantity is equal to a preselected quantity, or if the quantity of reserve remaining less said first and second quantities, all remaining reserve (i.e., "when the insider market price changes, the processor signals the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable" (see col.5, line31-45). Thus, when the price changes and the quantity is readjusted, it is obvious that there will be a new price (i.e., second price, third price, fourth price etc) and a new quantity (i.e., second quantity, third quantity, fourth quantity etc), and said third quantity would comprise at least a portion of said reserve quantity (i.e., every order (first, second, third etc) would be taken from non executable orders (reserve quantity) until all orders become executable - note if preselected quantity >

Art Unit: 3696

reserve quantity, then all orders have been executed, reserve=0, thus reserve quantity has to be \geq preselected quantity).

Re claim 15. Kalmus further discloses the method, further comprising completing at least one of said trades (i.e., order execution, see col.5 lines 5-45).

Re claim 16. Claim 16 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 17. Kalmus further discloses the method, wherein said condition is acceptance of a portion of an order for which the quantity and price are disclosed (i.e., when the insider market price changes, the processor signals the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45))

Re claim 18. Claim 18 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claims 19-22. Kalmus discloses the product, wherein said interest comprises a commodities contracts, energy forward contracts, in equity securities, fixed income securities (i.e., stock/orders/shares/securities see col.5, lines 1-10, also see abstract).

Re claim 23. Claim 23 recites similar limitations to claim 8 and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 24. Claim 24 recites similar limitations to claim 9 and thus rejected using the same art and rationale in the rejection of claim 9.

Art Unit: 3696

Re claim 25. Kalmus further discloses the method as stated supra, wherein said proposed trades are proposed sales, and said reserve price change increases said initial price (i.e., Thus, for example, the customer may seek to sell stock above the current bid price or to purchase the security below the current asked price. A customer may seek to trade a number of shares which exceeds the amount which the particular market maker is willing to accommodate, either in gross or for any one order. Orders not executable, i.e., orders not qualified, are either stored in memory in the processor 10 for later execution if they become qualified (such as by a favorable change in the market price for a security which can then accommodate the customer's price limits, col.5 lines 5-20. That is to say, the bid prices and the asked prices are readjusted when the orders become qualified depending on if the orders are sale orders or purchase orders, later execution of proposed sales would sell at higher prices than the initial price, and later execution of proposed purchases would purchase at lower prices than the initial prices).

Re claim 26. Kalmus further discloses the method as stated supra, wherein said proposed trades are proposed purchases, and said reserve price change decreases said initial price (i.e., Thus, for example, the customer may seek to sell stock above the current bid price or to purchase the security below the current asked price. A customer may seek to trade a number of shares which exceeds the amount which the particular market maker is willing to accommodate, either in gross or for any one order. Orders not executable, i.e., orders not qualified, are either stored in memory in the processor 10 for later execution if they become qualified (such as by a favorable change in the

Art Unit: 3696

market price for a security which can then accommodate the customer's price limits, col.5 lines 5-20. That is to say, the bid prices and the asked prices are readjusted when the orders become qualified depending on if the orders are sale orders or purchase orders, later execution of proposed sales would sell at higher prices than the initial price, and later execution of proposed purchases would purchase at lower prices than the initial prices).

Re claim 27. Claim 27 recites similar limitations to claim 12 and thus rejected using the same art and rationale in the rejection of claim 12.

Re claim 28. Claim 28 recites similar limitations to claim 13 and thus rejected using the same art and rationale in the rejection of claim 13.

Re claim 29. Claim 29 recites similar limitations to claim 14 and thus rejected using the same art and rationale in the rejection of claim 14.

Re claim 30. Claim 30 recites similar limitations to claim 15 and thus rejected using the same art and rationale in the rejection of claim 15.

Re claims 31 and 32. Kalmus further discloses the product, wherein said interest comprise currency, and said interest comprise a first currency and said initial price and said second price are expressed in a second currency ((i.e., stock/orders/shares/securities see col.5, lines 1-10, also see abstract).

Re claims 33 and 34. Claims 33 and 34 recite similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 35. Claim 35 recites similar limitations to claim 8 and thus rejected using the same art and rationale in the rejection of claim 8.

Art Unit: 3696

Re claim 36. Claim 36 recites similar limitations to claim 9 and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 37. Claim 37 recites similar limitations to claim 13 and thus rejected using the same art and rationale in the rejection of claim 13.

Re claim 38. Claim 38 recites similar limitations to claim 14 and thus rejected using the same art and rationale in the rejection of claim 14.

Re claim 39. Claim 39 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 40. Claim 40 recites similar limitations to claim 17 and thus rejected using the same art and rationale in the rejection of claim 17.

Re claim 41. Claim 41 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 42. Kalmus further discloses the method, comprising also automatically disclosing said quantity from reserve and said price therefor (i.e., operative best bid and best asked prices for each stock are communicated over link 22 from NASDAQ....., and orders for trades in the relevant securities are funneled to the processor in real time, see col.4, lines 52-60).

Re claim 43. Kalmus further discloses the method, comprising disclosing said quantity from reserve and said price therefor in response to a prompt (i.e., **the processor signals the trader** who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45).

Art Unit: 3696

Re claims 44 and 45. Kalmus further discloses the method, wherein said reserve price change is associated with said order in response to a prompt (i.e., when the insider market price changes, **the processor signals** the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45)).

Re claim 46. Claim 46 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 47. Claim 47 recites similar limitations to claim 42, and thus rejected using the same art and rationale in the rejection of claim 42.

Re claim 48. Claim 48 recites similar limitations to claim 43, and thus rejected using the same art and rationale in the rejection of claim 43.

Re claims 49 and 50. Kalmus further discloses the method, wherein said reserve price change is associated with said order in response to a prompt (i.e., when the insider market price changes, **the processor signals** the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45)).

Response to Arguments

Art Unit: 3696

3. Applicant's arguments filed 10/16/08 have been fully considered but they are not persuasive. The applicant argues in substance that the secondary reference, Waelbroeck, is not entitled to a filing date earlier than the filing date of the present applicant (April 20, 2001) because the material in paragraph 0424, cited by the examiner, is not disclosed in the Waelbroeck parent applications. Contrary to the applicant's assertion, the examiner contends that Waelbroeck in paragraph (0424) discloses that a working order option includes an order quantity that is greater than the minimum block quantity. The additional size is dispatched to be worked by an automated process that automatically places small slices on the regular market, in the manner known in the art as "random refresh" orders. This disclosure is mentioned in Waelbroeck's parent application #09750768 (US Pub No.: 20020010672) – "the common practice of splitting large interests into smaller orders affects all price discovery. When confronting each order, a market participant must incorporate the possibility that the order is only a small part of a much larger interest, because it is often impossible for the market participant to verify that many such orders are not being sent simultaneously." (please see paras 0005, background of the invention of application number 09750768 (US Pub No.: 20020010672). Waelbroeck mentions that the process that automatically places small order slices on the regular market (i.e., random refresh) is old and well known in the art. That is to say, Waelbroeck mentions this process in the published application number 2004/0059666, cited in this office action supra, and this teaching finds support in the parent application 09750768 (US Pub No.: 20020010672), thus the published application number 2004/0059666 is a prior art..

The applicant further argues that, even if we pretend that Waelbroeck is a prior art, Waelbroeck still fails to disclose associating with a total desired trade of interest a reserve price change. Contrary to the applicant's assertion, the examiner contends that the old and well-known Random Refresh Process, mentioned by Waelbroeck, of placing a small quantity of shares at the best price on the market, and whereby whenever said small quantity is exhausted, generating a new small order to be placed at the new best price constitutes associating with a total desired trade of interest a reserve price change.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3696


Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571)272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571)272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

/O. O. O./
Examiner, Art Unit 3696

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	09/839,529	HAUSMAN, ANDREW	
	Examiner	Art Unit	
	OJO O. OYEBISI	3696	